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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/929,719      | 08/13/2001  | John C. Massenburg   | 340058.435D2        | 1154             |

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SEED INTELLECTUAL PROPERTY LAW GROUP PLLC  
701 FIFTH AVE  
SUITE 6300  
SEATTLE, WA 98104-7092

EXAMINER

TRINH, MINH N

ART UNIT PAPER NUMBER

3729

DATE MAILED: 07/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/929,719             | MASSENBURG, JOHN C. |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Minh Trinh             | 3729                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 May 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/01, 1/03</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. Applicant's election of Group I, species 1A (claims 1-11) in the reply filed on 5/24/04 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). It is also noted that claims 12-37 have been previously cancelled in the preliminary amendment filed 8/13/01.

An Office action on the merits of claims 1-11 as follows.

#### ***Priority***

2. This application filed under former 37 CFR 1.60 lacks the necessary reference to the prior application. A statement reading "This is a Divisional of Application No. 09/069,223, filed 4/28/1998, which is US patent 6,299,510 issued 10/9/2001." should be entered following the title of the invention or as the first sentence of the specification. Also, the current status of all nonprovisional parent applications referenced should be included.

#### ***Specification***

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The following title is suggested: "High pressure fluid jet cutting machine" or the like.

4. The abstract of the disclosure is too long and it should be revised to reflect method invention and should be within the range of 50 to 150 words. Appropriate correction required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The following are examples:

“the fluid”(claim 1, line 8 ) lacks proper antecedent basis.

It is not clear whether the limitation recites “fluid” (claim 1, line 14 and 17 ) is the same as the “fluid” (claim 1, line 8).

“the one compartment” (claim 1, line 12, 14, 15, 19, etc) directed to “at least one compartment”(claim 1, line 8) therefore “the one compartment” should be changed to: -- the at least one compartment -- , for better clarification of the claimed subject matter.

“drawing fluid”(claim 4, line 7) should be:--drawing the fluid--.

“to allow fluid” (claim 5, line 4) should be :-- to allow the fluid--.

Further, applicants should carefully revise the claim language in order to clarify the claimed subject matter to which applicant is intended.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-3 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Herrington et al (4,656,791) in view of Yasukawa, deceased et al (4,872,293).

Herrington et al disclose a fluid-jet cutting machine, comprising: a nozzle associated with a high-pressure fluid source and an abrasive particle delivery device, the nozzle being configured to project an abrasive fluid-jet 18 (see Fig. 2); a carrier assembly 46 attached to the nozzle to move the nozzle and the fluid-jet along a cutting path (see Fig. 2); a tank 105 aligned with the nozzle, the tank including at least one compartment configured to receive the fluid and the abrasive particles of the fluid-jet along at least a portion of the cutting path and to control fluid flow out of the one compartment, the controlled fluid flow of the one compartment and the fluid-jet maintaining at least a substantial portion of the abrasive particles in suspension in the fluid in the one compartment without additional mechanical agitation (see Figs. 1-2); a fluid transport mechanism including a conduit 128, the conduit having a first end in fluid communication with the one compartment and a second end 130 outside of the one compartment (see Fig. 2).

Herrington et al however do not teach the a settling container separate from the one compartment, and the exact configurations i.e., wherein the second end of the

conduit being in fluid communication with the settling container, a portion of the fluid with suspended abrasive particles in the one compartment being transported through the conduit from the one compartment into the settling container, and the abrasive particles from the transported portion of fluid settling to a lower portion of the settling container while a clarified fluid is removed from the settling container through an outlet of the settling container. Yasukawa, deceased et al disclose the above including a settling vessel 54 associated the second end of the conduit, and a portion of the fluid with suspended abrasive particles in the one compartment 26 being transported through the conduit from the one compartment 26 into the settling container 54 (see Fig. 2). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the Yasukawa's teaching as described above onto the invention of Herrington et al in order to form a desired cutting device.

As applied to claim 2, it is inherently that the flowing of the fluid through the conduit when the first end of the conduit on the bottom of the at least one compartment and the second end of the conduit is being positioned below the first end.

As applied to claim 3, noting Herrington et al disclose the limitation of claim 3 (as shown in Fig. 2).

#### ***Allowable Subject Matter***

9. Claims 4-11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. The following is a statement of

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reasons for the indication of allowable subject matter: That the prior art fails to teach the limitations recited in these claims (i.e., see claim 4, lines 1-9, claim 6, lines 1-9) in combination with all of the limitations of the base claim and any intervening claims.

### ***Prior Art References***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Prior art references are cited for their teaching of High pressure jet cutting apparatus or the like.

### ***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Minh Trinh whose telephone number is (703) 305-2887. The examiner can normally be reached on Monday -Thursday 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (703) 308-1789. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Minh Trinh 7/27/04  
Patent Examiner Group 3729

mt